THE HON'BLE SRI JUSTICE K.C. BHANU

On Monday, the twenty second day of August

Two thousand and Five.

W.P.No.12490 of 2001

Smt. K.Jayalakshmi, w/o D.Venkateswara Rao, aged about 41 years, Senior Assistant, Quality Control Section, A.P.Housing Board, Hyderabad.

……Petitioner

And

Government of A.P., represented by its Principal

Secretary, M.A.& Housing Department,

Secretariat, Hyderabad and others.

…Respondents.

O R D E R:

This writ petition is filed to declare the proceedings issued by the 2nd respondent in Memo No.7134/B5/2000 dated 01.06.2001, as arbitrary and illegal, consequently, to direct the respondent 1 and 2 to adhere the rules of the Department by fixing the seniority of the petitioner over and above 3rd respondent.

Before adverting to the question as to whether the impugned proceedings issued by the 2nd respondent suffers from any legal infirmity requiring any interference as such by this Court, in exercise of its writ jurisdiction, it may be necessary, briefly, to note the relevant facts leading to the filing of this writ Petition. The petitioner was appointed as Junior Assistant on regular basis on 22.5.1980 under sports quota and as she had secured number of medals and qualifications, her name was included in the panel of promotion as Sl.No.8 in the year 1984. She had passed the Departmental Accounts Test on 27.11.1983.

The Departmental Promotion Committee constituted by the respondents-Board met in November 1985 and all the eligible candidates in the feeder cadre were considered for the post of Senior Assistant, but it did not consider the case of the petitioner. It is also the case of the petitioner that the 2nd respondent had filled up the post of Senior Assistants as per the recommendations of the D.P.C held in November 1986 in which the petitioner's name can be seen in the proceedings No.14632/B1/86, dated 9.10.1986. Mr.T.Anandam and 4 others were filed R.P.No.4609/98 on the file of the Administrative Tribunal and the Tribunal directed the Board to consider the grievance of the petitioners therein. As the stand taken by the Government that the Tribunal had got no jurisdiction to entertain any petition against the Housing Board, the petitioner had withdrawn the O.A.No.2621/96 and filed W.P.No.26860 of 1999' which is coming for adjudication along with this writ petition. Further, the petitioner submits that the respondents-Board had been issuing a provisional revised seniority list from time to time in respect of the cadre of Senior Assistant. Hence the petitioner for redressal of her grievance files the present writ petition.

Inter alia, the respondents-1 and 2 (Board) filed counter affidavits contending that the Order of the Tribunal had become final and the promotions to be considered basing on the seniority but not from the date of passing of departmental tests and the petitioner is not entitled to claim her right of promotion from the date of her passing Accounts Test on 27.11.1983. Further, the petitioner was appointed as Junior Assistant on 21.5.1980, her services were regularized with effect from 22.5.1980 and had been declared as approved probationer with effect from 7.9.1982. The Departmental Promotion Committee constituted by the Board had been considering the eligible candidates for promotion from time to time according to the Rules. Basing on the award of the Tribunal in R.P.No.4609 of 1988 the Board issued revised Orders on 26.7.1994 and accordingly, the petitioner is not entitled to get seniority as prayed by her.

Heard the learned counsel for the petitioner and the respondents.

The learned counsel for the respondents specifically contends that the order of the Tribunal had become final and that the promotions to be considered basing on seniority and not from the date of passing of departmental tests, therefore, the petitioner cannot be gained over contending that she had passed Accounts Test on 27.11.1983.

Now, the grievance of the petitioner is that since she passed the Accounts Test on 27.11.1983 and so she is entitled for promotion as a matter of right. After she had passed the Accounts Test on 27.11.1983, the A.P.Housing Board had taken up to fill up three vacancies on 31.1.1984, five vacancies on 6.6.1984 and two vacancies on 3.12.1985 with the candidates who are seniors to the applicant as they were appointed prior to 21.5.1980. Even the revised seniority list dated 22.6.1995 is under challenge.

The Tribunal gave a finding in R.P.No.4609 of 1988 dated 26.7.1994 wherein it was held that if the rules provide any cut of date to determine the eligibility of an employee for promotion, the cut of date should be taken into account. In the absence of any such cut of date in the rules, the eligibility as on 1.10.1986 should have been taken into account since the promotions are ordered in the month of October 1986. Promotions should be considered on the basis of seniority and not by the date of passing of Accounts test and ordered to reconsider the promotions as the promotions are ordered purely on temporary basis shall be reviewed. The said orders become final.

As per the orders of the Tribunal, the present impugned proceedings have been passed, but some of the parties have been benefited and they had not been added as parties. Therefore, the writ petition is liable to be dismissed on the sole ground that necessary parties were not added, even otherwise on merit also the petitioner cannot had any right of appointment by way of promotion, in view of the fact that she had passed the Accounts Test on 27.11.1983. Since the Tribunal had held categorically that the promotion must be based on the seniority and not by the date of passing test, the petitioner is not eligible for promotion from the date and seniority she claimed in this

petition.

The Writ Petition is devoid of merit and accordingly is dismissed. No order as to costs.

JUSTICE K.C. BHANU

22nd August 2005

BCS